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# **Supreme Court of the United States**

OCTOBER TERM, 1954

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**No. 251**

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**ROBERT SIMMONS,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Seventh Circuit**

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**REPLY TO BRIEF  
FOR THE UNITED STATES IN OPPOSITION**

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**MAY IT PLEASE THE COURT:**

Since I informed the Clerk of this Court that no reply in opposition would be filed in this case two decisions have been handed down by the United States Court of Appeals for the Ninth Circuit, making necessary this brief memorandum designated "Reply to Brief for the United States in Opposition."

## I.

The Court of Appeals for the Ninth Circuit in *White v. United States*, No. 13893, decided September 14, 1954, and in *Tomlinson v. United States*, No. 13892, decided September 15, 1954, followed the decision of the Court of Appeals for the Seventh Circuit in this case and in *Sicurella v. United States*, No. 250, October Term, 1954.

Petitions for writs of certiorari will be filed within the thirty-day time limit in the *White* and *Tomlinson* cases.

## II.

Petitioner Simmons objects to the suggestion of the Government in its brief in opposition that the petition for writ of certiorari should be limited in this case. All five of the questions presented to this Court in the petition for writ of certiorari at pages 2 to 6 will be presented to this Court in the *White* and *Tomlinson* cases.

The first question presented in this case is a very important one and should not be removed from the case. This question, as the same question involved in *Sicurella v. United States*, No. 250, October Term, 1954, involves the point of whether *Dickinson v. United States*, 346 U. S. 389 (Nov. 30, 1953), applies in cases involving conscientious objectors. The court below and the Court of Appeals for the Ninth Circuit in the *White* and *Tomlinson* cases held that the rule of the *Dickinson* case did not apply. The holding of the court below and that of the Ninth Circuit in the *White* and *Tomlinson* cases are in direct conflict with *Weaver v. United States*, 8th Cir., 1954, 210 F. 2d 815; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93; *United States v. Wilson*, 7th Cir., July 15, 1954, — F. 2d — . See also *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 804; but compare footnote 4, page 7 of slip copy of opinion in *White v. United States*, No. 13893, decided September 14, 1954, by the Ninth Circuit.

In these holdings it was expressly declared to the direct

opposite of the court below that the rule of *Dickinson v. United States*, 346 U. S. 389 (Nov. 30, 1953), did apply to conscientious objector cases. There is a direct conflict, therefore, between the holding by the court below and those of other courts of appeals on the point of whether the *Dickinson* rule applies in cases of this sort. The question is, moreover, of great public importance to the Government and the people of the United States in the administration of the draft law.

### III.

The holding of the court below that it was unnecessary to provide Simmons with a summary of the unfavorable evidence appearing in the FBI report is in direct conflict with *United States v. Gray*, 9th Cir., Sept. 22, 1953, 207 F. 2d 237, 241-242. This conflict is another reason why the writ of certiorari should not be limited. It should be granted to determine whether the hearing officer gave Simmons a full and fair summary of the unfavorable evidence appearing in the FBI report.

### CONCLUSION

WHEREFORE the writ of certiorari should be granted as prayed for in the petition.

HAYDEN C. COVINGTON

*Counsel for Petitioner*

September, 1954.